

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 04-10956WGY

ERNEST OGLETREE
Plaintiff

v.

CITY OF ATTLEBORO,
STURDY MEMORIAL
HOSPITAL, INC., JAMES G.
MACDONALD, DOUGLAS
JOHNSON, MICHAEL
BARTUCCA, ROBERT ASTIN,
AND LEWIS RHEAUME
Defendants

**ASSENTED TO MOTION TO
REMAND CASE BACK TO STATE SUPERIOR COURT
FOR LACK OF FEDERAL JURISDICTION**

NOW COMES, the Plaintiff and remaining defendants Sturdy Memorial Hospital, Robert Astin, Douglas Johnson, Louis Rheaume and Michael Bartucca, through counsel and do hereby move this Honorable Court for an Order remanding this matter back to the State Superior Court for lack of Federal Jurisdiction. As grounds for this motion the parties state as follows:

The above case was originally filed in the Massachusetts State Superior Court in the County of Bristol under the Civil Action Number C04-0059. The case was removed to the United States Federal District Court by defendants City of Attleboro and James G. MacDonald pursuant to 28 U.S.C. sect. 1441 and 1446, for allegations of violation of civil rights under the Fourteenth Amendment to the United States Constitution and relief sought pursuant to 42 U.S.C. sect. 1983. These specific claims pursuant to which this

Court obtained jurisdiction have been resolved via settlement. A Stipulation of Dismissal as to defendants City of Attleboro and James G. MacDonald only has been filed with the Court.

The only remaining claims in this action are for violation of State statutory and State tort law claims which are generally best heard before the State Courts. "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." See *Camelio v. American Federation of State, County and Municipal Employees*, 137 F.3d 666, 672 (1st Cir. 1998). Accordingly, the United States District Court need no longer retain jurisdiction of this matter and the parties respectfully request that this matter be remanded to and heard in the Massachusetts State Superior Court where it was originally filed.

WHEREFORE, it is respectfully requested that this Honorable Court issue an Order remanding this matter back to the Massachusetts State Superior Court for lack of Federal Jurisdiction.

Respectfully Submitted,
The Defendants,
Sturdy Memorial Hospital,
Douglas Johnson, Robert Astin and
Lewis Rheaume,
By their attorney,

/s/ Daniel J. Buoniconti
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The Plaintiff
Ernest Ogletree

By his attorney,

/s/ Mark Itzkowitz
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Dated: 2/9/07

